

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3306 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.PARIKH

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

-----

DHARMSINH @ SANJAY

CHANDRABHUSHANSINH PARIHAR

Versus

COMMISSIONER OF POLICE

-----

Appearance:

MR ANIL S DAVE for Petitioner

MR SJ DAVE, AGP for Respondent No. 1, 2, 3

-----

CORAM : MR.JUSTICE M.S.PARIKH

Date of decision: 07/07/97

ORAL JUDGEMENT

1. By way of this petition under Article 226 of the Constitution of India the petitioner - detenu has brought under challenge the detention order dated 8/1/1997 rendered by the respondent No.1 u/s. 3(1) of the Gujarat Prevention of Anti-social Activities Act, 1985 (Act No. 16 of 1985) (for short "the PASA Act").

2. The grounds on which the impugned order of detention has been passed appear at Annexure : C to the petition. The grounds of detention inter-alia show three registered cases as particularised below :

| CR No. | U/s. | Remarks | Other facts |
|--------|------|---------|-------------|
|--------|------|---------|-------------|

|   |  |  |  |
|---|--|--|--|
| Satellite 394, 397, 307, Pending -<br>Police Station 120B, 114,414 investi-<br>CR 455/96 of IPC r/w Sec. gation.<br>135(1) B.P.Act<br>& 25(1)(B)(A) |  |  |  |
|---|--|--|--|

|  |  |  |  |
|--|--|--|--|
| GIDC 394, 114 of -do-<br>Police Station IPC, 135(1) of<br>CR No.135/96 BP Act & 25/1/C<br>of the Arms Act<br>Date of offence is 7/11/1996. |  |  |  |
|--|--|--|--|

|   |  |  |  |
|---|--|--|--|
| Bapunagar 394,114 of IPC -do-<br>Police Station 25/1/C of the<br>CR No. 186/96 Arms Act.<br>Date of offence is 16/9/1996. |  |  |  |
|---|--|--|--|

The dates of incidents of the respective cases are 19/8/1996, 7/11/1996 and 16/9/1996. The particulars of the offences set out in the grounds of detention would clearly indicate that they are quite serious in nature. It is probable that on account of the seriousness of the offences the petitioner has not moved any application for bail even as on today (7/7/1997). It has been brought to the notice of the Court that in so far as the second offence is concerned, the petitioner was apprehended on or around 20/11/996 and since then till upto 8/1/1997 no preventive action had been taken.

3. It has been recited that the detenu's anti-social activity tends to obstruct maintenance of public order and in support of such conclusion statements of four witnesses have been relied. They speak about the incidents dated 1/11/1996 and 15/11/1996 indicating beating in public the concerned witnesses and creating atmosphere of fear amongst the people collected at the time of such incidents.

4. It is on the aforesaid incidents that the detaining authority has passed the impugned order of detention while also relying upon the aforesaid cases lodged against the detenu. The detenu has been stamped

as a dangerous person within the meaning of Section 2(c) of the PASA Act.

5. The petitioner has challenged the impugned order of detention on number of grounds, inter-alia, on the ground that the incidents and/or the cases against the detenu had taken place at much earlier point of time, the first being on or around 19/8/1996 and the second being on or around 16/9/1996. The first date of petitioner's arrest in so far as next offence is concerned is 20/11/1996. Even considering the passage of time from such date of first arrest there is a passage of nearly one month and 18 days. The submission is that days and months are not to be counted the totality of facts including the fact that the petitioner has been in custody have to be considered while showing to the court whether live-link between the dates of incidents and the date of detention order is present or not. It has, therefore, been submitted that in the absence of any explanation with regard to passage of time the subjective satisfaction of the detaining authority would stand vitiated. In support of this submission reliance has been placed on a decision of this Court rendered on 27/12/1996 (Coram : N.N. Mathur, J.) in Special Civil Application No. 8631 of 1996. After making a brief resume of the decisions of the Apex Court this Court observed as under :

"This unexplained delay makes a ground of detention not proximate vitiating the order of detention itself."

This Court also observed that it would not be necessary to state the facts with respect to the unregistered cases. The Court, therefore, preferred to adopt the course adopted by the Supreme Court in the case of Jagan Nath Biswas V/s. The State of West Bengal reported in AIR 1975 SC 1516, Anand Prakash V/s. State of U.P. reported in AIR 1990 SC 516 and Pradeep Nilkanth V/s. S. Ramamurthy reported in 1993 (2) Suppli. SCC 61. This Court, therefore, quashed the order of detention in that case.

6. It has however been submitted by Mr.S.J. Dave, learned A.G.P. for the respondents that there is no delay in so far as the present case is concerned. It is no doubt true, he submits, the passage of time in between the dates of the registered cases and the date of the impugned order of detention is around three months and the passage of time in between the first date of custody and the impugned order of detention is around one month

and eighteen days. He, however, submits that the statements of the undisclosed witnesses were recorded soon before the date of the impugned order of detention. Hence, it could hardly be said that the live link between the offending activity of the detenu and the requirement of the detenu being preventively detained has been snapped. In support of his submission he has placed reliance upon a decision of the Honourable Court in the Case of Rajendrakumar Natvarlal Shah V/s. State of Gujarat & ors., reported in AIR 1988 SC 1255. He read Paragraphs : 9 & 10 before this Court. In fact the reading of the said paragraphs makes a distinction between the preventive detention under the law like conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 and other preventive detention law. The Apex Court also pointed the distinction between the delay in making the order under law like Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 and the delay in complying with the procedural safe-guards of Article 22(5) of the Constitution of India. The Court has further observed that no mechanical test by counting the months of the interval was sound. It all depends on the nature of the acts relied on grave and determined or less serious and corrigible on the length of the gap, short or long, on the reason for the delay in taking preventive action like information of participation being available only in the course of an investigation and that the Court has to investigate whether the causal connection has been broken in the circumstances of each case.

7. The Affidavit filed on behalf of the respondents in this case clearly reveals that there is no explanation worth the name with regard to the delay in making the order of detention.

It has, however, been submitted on behalf of the respondents that although the petitioner was in custody in C.R. No. 455/1996 he was remanded to police custody on or around 20/12/1996 and was under police remand upto 27/12/1996, whereas proposal for detention was moved on or around 6/1/1997 and the order of detention has been passed on 8/1/1997. It has also been submitted in respect of C.R. No. 186/1996 that the petitioner was under police remand between 3/12/1996 and 7/12/1996. It has, however, been submitted that during the rest of the period the petitioner was in judicial custody. It is also fairly conceded that no application for bail came to be moved at any point of time by the petitioner. It has also been submitted that the witnesses of unregistered cases came forward before the concerned authority during

January 1997. Hence, it could hardly be said that there is delay in passing the detention order. If the submission with regard to unregistered cases is not taken into consideration the facts noted above do reflect the absence of live-link between the respective dates of the registered cases and the date of the impugned order of detention. When there is passage of considerable time between the alleged incidents and the date of detention the Court can doubt the genuineness of the alleged "subjective satisfaction" of the detaining authority as to the necessity of detaining the detenu with a view to preventing him from acting in any manner prejudicial to the maintenance of public order.

8. With regard to the unregistered incidents the Division Bench of this Court (Coram : S.M.Soni & S.D.Shah, JJ., per Soni, J.) in its decision dated 15.10.1993 in Special Criminal Application No. 1060 of 1993 observed ... "the statements of the persons are recorded on 22.11.1992, wherein they have referred to the incidents of 17.12.92, 27.11.92 and 22.11.92, but the basis for holding the detenu as a dangerous person is the offence registered against him and, therefore, there is sufficient time-lag which has snapped the live link between the activity and the action taken against the detenu, which has affected the genuineness of the subjective satisfaction of the detaining authority."

9. In the result, in view of the peculiar facts and circumstances of the present case it has to be held that the impugned order of detention would stand vitiated on account of the unexplained delay as stated above.

10. There are other grounds of challenge levelled against the impugned order of detention. However, in view of the fact that the petitioner would succeed on the ground of delay, it is not necessary to deal with the other grounds. Hence, following order is passed :

The impugned order of detention is hereby quashed and set aside. The detenu - prisoner - Dharamsinh alias Sanjay Chandrabhushansinh Parihar shall be released from preventive detention as he will be required to be detained in judicial custody in the registered cases in question. Rule made absolute accordingly.

\* \* \* \* \*